In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-20

ROGER B. JACOBS, PETITIONER

v.

CARL R. GROMATSKY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

The Internal Revenue Code of 1954 prescribes two basic methods for the collection of income taxes: (1) the quarterly payment of estimated taxes (Sections 6015(a) and 6153(a)(1)) and (2) the withholding of taxes from wages of an employee (Sections 3401-3404). Under either method, Section 6513(b) deems the tax to have been paid on the date prescribed for filing the return. No interest is paid on any resulting overpayment if the overpayment is refunded within 45 days from the later of either the date the return was filed or the date the return should have been filed. Section 6611(e).

Petitioner challenges the constitutionality of these methods of collecting income taxes.[1] Specifically, peti-

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[1]It is unclear what collection method was applicable to petitioner. While the beginning of the petition refers to taxes "withheld from his wages" (Pet. 2), the latter portion (Pet. 3-4) refers to the statutory provisions regarding estimated payments.

tioner complains that the prohibition against interest on taxes violates the Fifth Amendment. He alleges that he made payments in excess of the tax determined to be due and that the overpayment was refunded within 45 days without interest. Contending that the statutory interest limitation violates the Fifth Amendment, petitioner brought this suit to recover $19.20, the amount of interest allegedly due. Petitioner also sought a declaration by a three-judge court that the statutory system for collection of taxes violated the Fifth Amendment and sought interest for all taxpayers who had similarly overpaid (R. 1-3).[2] The district court dismissed the complaint (Pet. App. 17) and the court of appeals affirmed (Pet. App. 14-16).

Quite apart from the prohibition contained in 28 U.S.C. 2201 against declaratory judgments in actions involving taxes, petitioner's constitutional claim is contrary to this Court's longstanding and consistent holdings that in cases other than eminent domain, the term "just compensation" in the Fifth Amendment does not necessarily include interest. Whether interest is allowable against the United States depends upon specific statutory or contractual provisions. Absent such a provision allowing the interest claimed in this case, there is no constitutional support for petitioner's claim. *United States* v. *N.Y. Rayon Co.*, 329 U.S. 654, 658-659. Cf. *United States* v. *Hotel Co.*, 329 U.S. 585, 589-590; *Albrecht* v. *United States*, 329 U.S. 599.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.

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[2] "R." references are to the separately bound record appendix filed with the court of appeals.